

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL BRYNES and DEPARTMENT OF THE ARMY, DIRECTORATE
OF ENGINEERING & HOUSING OPERATIONS & MAINTENANCE DIVISION
MECHANICAL BRANCH, Fort Sam Houston, TX

*Docket No. 01-1823; Submitted on the Record;
Issued May 14, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether appellant has met his burden of proof in establishing a binaural loss of hearing; and (2) whether appellant has more than eight percent loss of hearing in his left ear.

On April 5, 2000 appellant, a 50-year-old utility systems repairer-operator supervisor, filed a notice of occupational disease alleging that he developed a binaural loss of hearing due to factors of his federal employment. The Office of Workers' Compensation Programs accepted appellant's claim on February 28, 2001 for loss of hearing in the left ear. By decision dated March 30, 2001, the Office granted appellant a schedule award for eight percent permanent impairment of his left ear due to loss of hearing.

The Board finds that appellant has an employment-related loss of hearing in his right ear.

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete factual and medical background, showing a causal relationship between the claimed condition and identified factors. The belief of a claimant that a condition was caused or aggravated by the employment is not sufficient to establish causal relation.¹

¹ *Lourdes Harris*, 45 ECAB 545, 547 (1994).

Appellant submitted factual evidence identifying his noise exposure. He also submitted several audiological reports, as well as an audiogram dated April 4, 2000. In order to establish a work-related loss of hearing, the Board requires that the employee undergo both audiometric and otologic examination; that the audiometric testing precede the otologic examination; that the audiometric testing be performed by an appropriately certified audiologist; that the otologic examination be performed by an otolaryngologist certified or eligible for certification by the American Academy of Otolaryngology; that the audiometric and otologic examination be performed by different individuals as a method of evaluating the reliability of the findings; that all audiological equipment authorized for testing meet the calibration protocol contained in the accreditation manual of the American Speech and Hearing Association; that the audiometric test results included both bone conduction and pure tone air conduction thresholds, speech reception thresholds and monaural discrimination scores; and that the otolaryngologist's report must include: date and hour of examination, date and hour of employee's last exposure to loud noise, a rationalized medical opinion regarding the relation of the hearing loss to the employment-related noise exposure and a statement of the reliability of the tests.² As there was no evidence which complied with the above standard, the Office referred appellant for a second opinion evaluation with Dr. Alan Dinesman, a Board-certified otolaryngologist.

In a report dated March 19, 2001, Dr. Dinesman found that beginning in 1972 appellant demonstrated a high frequency hearing loss in his left ear. He concluded that appellant's hearing loss was greater than that normally predicated on the basis of presbycusis, that appellant's employment-related noise exposure was sufficient to have caused the loss and diagnosed sensorineural hearing loss and tinnitus. Dr. Dinesman reviewed the audiogram and rated appellant's hearing loss in both his right and left ears in accordance with Office procedure. He concluded that appellant had no ratable loss of hearing in his right ear.

The district medical Director reviewed the medical evidence of record including Dr. Dinesman's report. He concluded that appellant did not have a ratable loss of hearing in his right ear. The Board finds that the medical evidence of record is sufficient to establish that appellant has an employment-related loss of hearing in both his right and left ears, but the extent of loss to the right ear is not ratable for schedule award purposes.

The Board further finds that appellant has no more than eight percent loss of hearing in his left ear, for which he received a schedule award.

The schedule award provision of the Federal Employees' Compensation Act³ and its implementing regulation⁴ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be

² *Raymond H. Van Nett*, 44 ECAB 480, 482-83 (1993).

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404 (1999).

uniform standards applicable to all claimants. The American Medical Association, *Guides to the Evaluation of Permanent Impairment*,⁵ has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.

The Office properly considered the medical evidence submitted in support of appellant's claim. A medical report was submitted from Dr. Dinesman, a Board-certified otolaryngologist, which conforms to applicable criteria.⁶ The accompanying audiogram demonstrates losses at the frequencies of 500, 1,000, 2,000 and 3,000 cycles per second, which were added to reach appellant's total decibel loss in his left ear.⁷ The A.M.A., *Guides* convert the sum of the total decibel losses in Table 11-1 to reach appellant's monaural loss of hearing for schedule award purposes.⁸ For levels recorded in the left ear of 15, 20, 20 and 65, the sum of 120 derives 7.5 percent monaural loss. The A.M.A., *Guides* provide that rounding off is to be to the nearest whole number.⁹ Therefore, the Office properly granted appellant a schedule award for eight percent permanent impairment of his left ear due to loss of hearing.

In regard to appellant's right ear, his audiogram demonstrates losses at the frequencies of 500, 1,000, 2,000 and 3,000 cycles per second, which were added to reach appellant's total decibel loss in his right ear.¹⁰ The A.M.A., *Guides* convert the sum of the total decibel losses in Table 11-1 to reach appellant's monaural loss of hearing for schedule award purposes.¹¹ For levels recorded in the right ear of 5, 10, 20 and 35, the sum of 70 is not included in the range of ratable loss of hearing. The A.M.A., *Guides* provide that for any sum of total decibel losses less than 100 there is no compensable loss of hearing.¹² Therefore, the Office properly granted appellant a schedule award for eight percent permanent impairment of his left ear.

⁵ A.M.A., *Guides*, (5th ed. 2001).

⁶ *Raymond H. Van Nett*, *supra* note 2.

⁷ The A.M.A., *Guides* provide that if the average of the hearing levels at 500, 1,000, 2,000 and 3,000 hertz is 25 decibels or less, then in accordance with the findings of the 1996 American National Standards Institute audiometric standards, no impairment rating is assigned since there is no change in the ability to hear everyday sounds under everyday listening conditions. A.M.A., *Guides* at 250.

⁸ A.M.A., *Guides* at 247, Table 11-1.

⁹ A.M.A., *Guides* at 9-10, 20.

¹⁰ The A.M.A., *Guides* provide that if the average of the hearing levels at 500, 1,000, 2,000 and 3,000 hertz is 25 decibels or less, then in accordance with the findings of the 1996 American National Standards Institute audiometric standards, no impairment rating is assigned since there is no change in the ability to hear everyday sounds under everyday listening conditions. A.M.A., *Guides* at 250.

¹¹ A.M.A., *Guides*, 247, Table 11-1.

¹² *Id.*

The March 30, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed. The February 28, 2001 decision is affirmed as modified to include an employment-related loss of hearing in the right ear.

Dated, Washington, DC
May 14, 2002

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member